

**BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE  
STATE OF MONTANA**

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IN THE MATTER OF:	)	Cause No. INS-2007-75
	)	
DNH CONSULTING GROUP LLC,	)	<b>TEMPORARY CEASE AND DESIST</b>
and ERIC DEVASH, individually and as	)	<b>ORDER AND OPPORTUNITY FOR</b>
sole member of the foregoing entity,	)	<b>HEARING</b>
	)	
Respondents.	)	

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The State Auditor and Commissioner of Insurance of the state of Montana  
(Commissioner), pursuant to the authority of the Montana Insurance Code, Mont. Code Ann. §  
33-1-101, *et seq.*, hereby sets forth the following allegations, conclusions of law, order to cease  
and desist, and notice of right to a hearing:

**ALLEGATIONS OF FACT**

1. DNH Consulting Group LLC (DNH), d.b.a. Health Services, is a Florida limited liability company formed in December of 2005.
2. Erik Devash is the managing member of DNH.
3. DNH purports to be a purveyor of pharmacy discount cards.

4. DNH markets its product through telephone solicitors. DNH's telephone solicitors require purchasers to give their bank account information so that DNH may take automatic withdrawals from consumer accounts. The total price of the DNH card is or was \$499.00.

5. DNH claims its discount card provides consumers with an average of 20-90% off the regular retail price for prescriptions and a discount of 5-90% on generic prescriptions and a 5-75% discount on name brand prescriptions.

6. DNH purported to offer other discounts on prescribed medical equipment, lab work, contact lenses and imaging such as MRI scans and x-rays.

7. DNH did not, at all times material hereto, have contracts with any medical care or prescription drug providers in the state of Montana which obligated the providers to honor the DNH discount card.

8. DNH did not provide the Department of Insurance with the name and contact information of its officer in charge of regulatory compliance prior to soliciting its product in the state of Montana.

9. DNH did not disclose to discount card purchasers, in enrollment materials, that purchasers had thirty days within which to cancel the purchasers' memberships.

10. DNH did not state on its medical care discount card that the product was not insurance in bold and prominent type of at least 14 points in size.

11. DNH did not provide prospective purchasers access to a list of any medical care or prescription drug providers in the prospective purchasers' service areas prior to purchase.

12. DNH did not provide prospective purchasers reasonable access to a list of benefits and services provided through the use of the discount card prior to purchase.

13. DNH marketed, promoted, sold, or distributed its medical care discount card in Montana for a period of at least 91 days to at least 29 Montana consumers without holding a certificate of registration issued by the Commissioner of Insurance.

### **CONCLUSIONS OF LAW**

1. The State Auditor is the Commissioner of Insurance. Mont. Code Ann. § 2-15-1903.
2. The Montana Insurance Department is under the control and supervision of the Commissioner. Mont. Code Ann. §§ 2-15-1902 and 33-1-301.
3. The Commissioner and Insurance Department have jurisdiction over this matter. Mont. Code Ann. § 33-1-311.
4. The Commissioner shall administer the Insurance Department to protect insurance consumers. Mont. Code Ann. § 33-1-311(3).
5. “Pharmacy discount card” means a paper or plastic device or other mechanism arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for consideration, a discount or access to a discount on one or more prescription drugs, and that is not combined with another type of medical care discount. Mont. Code Ann. § 33-38-102(8).
6. “Medical care discount card” means a paper or plastic device or other mechanism, arrangement, account, or other device that does not constitute insurance, as defined in 33-1-201, that purports to grant, for consideration, a discount or access to a discount in a medical care-related purchase from a health care provider. The term does not include a pharmacy discount card unless a pharmacy discount benefit is combined with another type of medical care discount. Mont. Code Ann. § 33-38-102 5(a)-(b).

7. Although the discount card sold by DNH to Montana consumers may appear to be a pharmacy discount card, it is as a matter of law a medical care discount card because the pharmacy discount benefit is combined with medical care discount benefits on medical care-related purchases from health care providers such as prescribed medical equipment, lab work, contact lenses, and imaging such as MRI scans and x-rays.

8. A "medical care discount card supplier" is a person engaged in selling or furnishing, as either principal or agent, for consideration, one or more medical care discount cards to another person or persons. Mont. Code Ann. § 33-38-102.

9. "Person" includes an individual, insurer, company, association, organization, Lloyd's, society, reciprocal or interinsurance exchange, partnership, syndicate, business trust, corporation, or any other legal entity. Mont. Code Ann. § 33-1-202(3).

10. Respondents are medical care discount card suppliers.

11. According to Mont. Code Ann. § 33-38-105(1), a medical care discount card supplier may not market, promote, sell, or distribute a medical care discount card in this state unless the supplier holds a certificate of registration as a supplier issued by the commissioner.

12. Respondents do not hold a certificate of registration.

13. DNH has committed at least ninety-one violations of Mont. Code Ann. § 33-38-105 by marketing, promoting, selling, or distributing its product in the state of Montana for a period of at least 91 days to at least 29 Montana consumers.

14. Respondents violated Mont. Code Ann. § 33-38-104(1) by failing to give consumers a thirty-day right to cancel memberships and by failing to ensure that each purchaser or user

received with the card a notice stating the terms under which the medical care discount card may have been returned or canceled.

15. Respondents violated Mont. Code Ann. § 33-38-103(2)(a) by failing to state on their medical care discount cards that the product was not insurance in bold and prominent type of at least 14 points in size.

16. Respondents violated Mont. Code Ann. § 33-38-103(1)(c) by failing to provide prospective purchasers or users, before purchase of the medical care discount card, access to a list of health care providers, including the name, city, state and provider type.

17. Respondents violated Mont. Code Ann. § 33-38-103(2)(b) by failing to designate and provide the Department with the name, address and telephone number of a medical care discount card compliance officer responsible for ensuring regulatory compliance.

18. Respondents violated Mont. Code Ann. § 33-38-103(1)(d) by failing to enter into contracts with prescription drug and medical care providers in Montana to provide the discounts represented by the Respondents to be granted to purchasers of the card.

19. Respondents violated Mont. Code Ann. § 33-38-103(1)(a) by making misleading, deceptive or fraudulent representations regarding the discount or range of discounts offered by the medical card discount card and the access to any range of discounts offered by a medical care discount card because there were no providers in Montana under contract to provide the purported discounts.

20. A person commits the act of insurance, medical care discount card, or pharmacy discount card fraud, when in the course of offering or selling insurance, a medical discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be

untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment. Mont. Code Ann. § 33-1-1302

21. Respondents violated Mont. Code Ann. § 33-1-1302 by representing that the medical care discount card provided benefits which were not provided when DNH did not have contracts with any medical care or prescription drug providers obligated to honor the DNH discount card and by representing that the medical care discount card was a valid and lawful product in Montana. Respondents made these representations knowing that they were untrue or with reckless indifference as to the truth of the representations with the intention of causing consumers to rely on the misrepresentation to the consumers' detriment.

#### **TEMPORARY CEASE AND DESIST ORDER**

Pursuant to Mont. Code Ann. § 33-1-318, it appears to the Insurance Department that the above-named Respondents have engaged, are engaged or are about to engage in acts or practices constituting violations of the Montana Insurance Code including the offering of medical care discount cards in violation of Montana Code Ann. § 33-1-101 *et seq.*

1. Therefore, it is ORDERED that the Respondents shall immediately cease and desist from:

a. soliciting Montana residents by email, facsimile, telephone, mail, internet or any other means so as to induce Montana residents to purchase pharmacy and/or medical care discount cards under any of the identified business organizational titles or under any other name or organization;

b. selling, distributing, and collecting money as consideration for pharmacy and/or medical care discount cards; and

c. engaging in other any act, practice or course of business that violates the Montana Insurance Code.

2. It is further ORDERED that Respondents shall, within 20 days from receipt of this Order, provide the Insurance Department with:

a. a complete list of Montana consumers who received or paid for Respondents' medical care discount cards within the last five years that includes full consumer contact information;

b. a full accounting of money collected from sales to Montana consumers that indicates the dates paid, the amounts paid, and identifies each consumer who made the payment(s);

c. any scripts, orders, outlines, or other marketing materials used to solicit medical care discount cards via the telephone and the internet;

d. a complete list of Respondents' enrollers, solicitors, and marketers that includes company and individual names, telephone numbers, and addresses;

e. copies of any and all contracts between Respondents and providers, provider networks, entities or organizations with which Respondents and/or the provider networks have contractually bound providers to honor Respondents' discount card.

3. This Order is effective immediately and shall continue in full force and effect until further order of the Insurance Commissioner. This Order is binding on Respondents, their agents, affiliates, employees and/or other representatives, both current and successor, whether named or unnamed herein.

## **PENALTIES**

Pursuant to Mont. Code Ann. § 33-1-318 , a violation of this Order is a separate violation for which the Commissioner may impose a fine not to exceed \$5,000.00 per violation in addition to other penalties imposed by law.

## **NOTICE OF RIGHT TO HEARING**

You are entitled to a hearing and to respond to this Temporary Cease and Desist Order and to present evidence and arguments on all issues involved in this case. If you wish to contest the allegations herein, you must make a written request for a hearing within 15 days of receipt of this Order to Michael Winsor, Special Assistant Attorney General, State Auditor's Office, 840 Helena, Avenue, Helena, MT 59601. The hearing shall then be held within 20 days of the Commissioner's receipt of the hearing request, unless the time is extended by agreement of the parties or by order of the hearing examiner. If you do not request a hearing and the Commissioner orders none, this Order shall become permanent, and the above allegations will be declared the findings of fact and the above conclusions of law will be declared the final conclusions of law.

Should you request a hearing, you have the right to be accompanied, represented and advised by an attorney. If the attorney you choose has not been admitted to the practice of law in the state of Montana, she or he must comply with the Montana State Bar for appearing *pro hac vice* and the requirements of *Application of American Smelting and Refining Co.*, 164 Mont. 139, 520 P.2d 103 (1973) and *Montana Supreme Court Commission on the Unauthorized Practice of Law v. O'Neil*, 2006 MT 284, 334 Mont. 311, 147 P.3d 200 (2006). If you request a hearing, you will be given notice of the date, time, and place of the hearing.



DATED this 23rd day of March, 2009.

MONICA J. LINDEEN  
State Auditor and Commissioner of Insurance

By: Robert W. Moon  
ROBERT W. MOON  
Deputy Commissioner of Insurance

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that this 23 day of MARCH, 2009, a true and correct copy of the foregoing Temporary Cease and Desist Order and Opportunity for Hearing was served upon the following by certified mail, with postage prepaid and return receipt requested:

DNH Consulting Group, LLC  
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Darla Sautter  
Darla Sautter, Legal Secretary  
Montana State Auditor's Office